



# Review of the Letting of a Domiciliary Care Contract to Alpha Care Limited

## **Powys County Council**

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# Status of report

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The team who delivered the work comprised Iolo Llewelyn and David Rees under the direction of Anthony Barrett

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# Summary report

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## Introduction

1. In March 2014, Powys County Council awarded contracts with a four year duration for the provision of adult domiciliary care. Four domiciliary care providers were appointed to deliver the service, two in the North and two in the South of Powys. Within a year of their commencement three of the contracts had been terminated; one was terminated by the authority and two by mutual agreement.
2. In April 2015, the principal domiciliary care contractor for the South of Powys, Alpha Care Limited (Alpha) ceased to operate due to financial difficulties. The collapse of this contract attracted intense public and media interest prompting the Auditor General for Wales (Auditor General) to undertake an audit review of the circumstances and issues which led to the failure of the contract. The Auditor General's review focused on the contract with Alpha. However, as Alpha was appointed as part of a county-wide tendering exercise, the audit review identifies issues which have relevance to other domiciliary care contracts within Powys.
3. Alpha commenced work under the contract on 23 April 2014. For various reasons there were problems with the transfer of existing care packages and staff from previous providers to Alpha. Alpha also experienced cash flow problems and to support the company through these difficulties the Authority paid agreed elements of disputed invoices, whilst seeking to resolve the disputed elements.
4. During the autumn/winter 2014-15 concerns were raised with the Care and Social Services Inspectorate Wales (CSSIW) by service users and their representatives regarding the quality of the service provided by Alpha. CSSIW undertook an inspection of the company's work, and in early 2015 CSSIW issued six notices of non-compliance with the Domiciliary Care Agencies (Wales) Regulations 2004.
5. In late 2014, Alpha advised the Authority that it had serious financial difficulties. In order to ensure continuity of care to its vulnerable elderly clients, the Authority put in place arrangements to support Alpha. The Authority re-categorised areas classified under the contract as 'town' as 'rural' in order to better reflect the costs being incurred by the provider, provided staff support to help Alpha schedule work and held regular meetings with Alpha to discuss how difficulties could be resolved. The Authority actively considered other options to support the company including:
  - providing Alpha with a loan of £285,000 (which the Authority ultimately decided should not proceed); and
  - increasing the rate the Authority would pay for each unit of care delivered above the original contract value.

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6. The Authority decided, however, that it was not sustainable to continue using Alpha due to the latter's financial position and the contract was terminated in early April 2015. The Authority took on the services formerly provided by Alpha and some 124 former Alpha staff members were transferred to the Authority. Approximately a third of this work has now been reallocated to external providers.
  7. This report sets out the findings of the Auditor General's review and considers the lessons to be learnt by the Authority from the way it procured and managed the domiciliary care contract.
  8. This project was undertaken to assist the Auditor General in discharging his responsibility under the Public Audit Wales Act 2004 to satisfy himself that the Authority made proper arrangements for securing economy, efficiency and effectiveness in its use of resources in letting and managing this contract.
  9. The domiciliary care service in Powys has already been subject to reviews by:
    - Oxford Brookes University's Institute of Public Care (IPC), jointly commissioned by the Authority and the Social services Improvement Agency for Wales; and
    - CSSIW.
  10. We have not duplicated the above work but where appropriate, we have drawn on the findings of these other reviews, and refer to them in this report.

## Overall conclusions

11. Powys County Council had been concerned for several years that the development of domiciliary care services across Powys was inconsistent and that the quality and value for money of the service needed improvement. The Authority decided to look at alternative ways of commissioning the service. In late 2013 the Authority sought to progress quickly the development and implementation of new arrangements for the service.
12. In circumstances where timescales are compressed, ensuring that risk is effectively managed and proper accountability arrangements are in place is particularly important. We are of the view that in its haste to introduce the new domiciliary care service as quickly as possible, the integrity of the Authority's established governance arrangements was compromised. In consequence, the Authority and users of the domiciliary care service were exposed to unnecessary risk. We found that:
  - the governance, management and scrutiny arrangements established for the procurement of the domiciliary care service were inadequate;
  - weaknesses and ambiguities in the Invitation to Tender (ITT) meant that it was not conducive to the submission of robust tenders by potential providers;
  - weaknesses in the processes adopted for the evaluation of tenders submitted by potential providers has resulted in the Authority being unable to demonstrate that contract award decisions were soundly based; and

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- the Authority tried to support Alpha to deliver the contract, but these efforts proved unsuccessful.
- 13.** In the light of the findings of this report, the Authority should review other major projects currently being progressed and assure itself that the concerns identified in respect of governance and accountability are not more widespread.

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## Recommendations

### **Domiciliary care provision**

R1 The Authority should ensure that the weaknesses and/or deficiencies in the arrangements established to let the current domiciliary care contract are not replicated in any future domiciliary care procurement exercise. These include deficiencies in:

- governance and accountability;
- the way the contract was structured;
- information made available to tenderers; and
- the way in which tenders were evaluated.

### **Wider implications for the Authority**

R2 In order to meet the challenges of transforming its service delivery in the light of reduced financial resources and increasing demand, the Authority has adopted a clearly defined commissioning and procurement strategy.

We recommend that the Authority consider whether the issues raised in this report have wider relevance for the successful delivery of its commissioning and procurement strategy, and undertake a review of its processes for developing and letting major contracts. Particular attention should be paid to ensuring that the governance arrangements for developing, scrutinising and approving contracting exercises are appropriate and are working in practice.

### **Document retention**

R3 Audit work undertaken previously by the Auditor General in 2010 and 2014 on the Authority's whistleblowing policies identified that 'there was often a lack of an audit trail to support key decisions and events. Some key decisions were not documented and there were instances of key documents or supporting information not being found or not existing.'

Similar issues are identified in this report. The review recommended above should also consider the extent to which adequate documentation is produced and retained to support key decisions made when developing and letting tenders.

# Detailed report

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## Background

14. Historically Powys County Council had commissioned most of its domiciliary care from some 25 separate private sector providers, purchased on a 'spot contract' basis, supplemented by its in-house workforce. As a result of the contracting arrangements, the development of home care across the County had been inconsistent, and the Authority had concerns regarding the quality, cost and value for money of the service. Furthermore, the Authority was also concerned that, under the existing arrangements, providers were only required to give 10 days' notice before ceasing to support a care package and that a significant number of care packages could not be placed with any providers at all.
15. From 2008 onwards, the Authority considered various options for commissioning its domiciliary care services. By early 2013 the Authority had decided to seek tenders for the domiciliary care services already outsourced. It was not intended to outsource the work undertaken by the in-house domiciliary care workforce due to concerns over the cost of transferring staff to private contractors under the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).
16. In a parallel development, the Authority sought to develop its re-ablement services. A report to Cabinet dated 23 April 2013 described re-ablement as 'a service which supports people to maintain or increase their skills thus being less reliant on traditional services. Through re-ablement people who would have needed ongoing home care at a cost to the Authority are able to return to more independent lives. This results in:
  - improved outcomes in terms of independent living for service users;
  - improved value for money in terms of cost avoidance for Powys County Council; and
  - more sustainable services to meet the needs of the growing older population in Powys within the resources available.'
17. The authority estimated that the planned extension of the re-ablement service would result in reductions in demand for domiciliary services equivalent to some £1.9 million per annum.
18. In June 2013, the Authority invited tenders for the provision of domiciliary care services within the county. The key features of the exercise were:
  - dividing the county into 19 lots;
  - providers would initially apply for inclusion on a framework; specific lots would be awarded to providers on the framework following 'mini competitions'; and
  - providers could bid for a maximum of 5 lots up to of 75,000 hours per annum.
19. Seventeen bids were received for inclusion on the framework. Five of these were assessed as being below the threshold set for admission to the framework. However, three of the latter were existing suppliers to the Authority, who between them provided some 50 per cent of the workload. In order to try to minimise short-

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term disruption to the service the threshold was lowered to allow these low scoring providers into the framework.

- 20.** When tenders were invited for specific lots a number of problems arose, as set out in detail in [paragraph 32](#), which led to the decision in December 2013 to abandon the tendering exercise and commence a new procurement exercise with a different lotting strategy.
- 21.** On 20 November 2013, the Authority invited domiciliary care providers to a meeting in which the Authority's proposals for new contractual arrangements were set out and discussed.
- 22.** The key elements of the revised approach involved:
  - Dividing the county into two lots and appointing two providers for each lot. The two lots consisted of Framework A (for the Southern part of the county) and framework B (for the northern part of the County). For each lot there would be a primary provider (allocated 60 per cent of the work in the relevant area) and a secondary provider (allocated 40 per cent of the work in the relevant area).
  - Providers being willing to accept work across the whole geographical area covered by each framework.
  - Requesting potential providers to state how much of the work they would subcontract, up to a maximum of 40 per cent of the work.
  - Requesting separate hourly rates for town and rural areas within each lot. Rates were also requested for work which previously had been delivered by the in-house workforce; these rates were required to take into account transfers of staff from the Authority under TUPE.
  - Potential providers only being allowed to tender for one Framework.
- 23.** In January 2014, potential domiciliary care providers were invited to submit tenders for either Framework A or Framework B. Five suppliers submitted tenders for Framework A and six submitted bids for Framework B.
- 24.** In March 2014, following an evaluation of the tenders, the Authority awarded contracts with a four year duration for the provision of adult domiciliary care. Four domiciliary care providers were appointed to deliver the service, two in the North and two in the South of Powys. Alpha was appointed as the principal contractor for the South of Powys to undertake 60 per cent of the contracted work in that area.
- 25.** Alpha commenced work under the contract on 23 April 2014. For various reasons there were problems with the transfer of existing care packages and staff from previous providers to Alpha. From the outset, the secondary provider in the South was unable to fulfil its contractual requirement to provide 40 per cent of the services and Alpha agreed for an initial period to increase its service provision from 60 per cent to 75 per cent.
- 26.** Alpha also experienced cash flow problems and to support the company through these difficulties the Authority agreed to pay any undisputed elements of disputed invoices, whilst seeking to resolve the disputed elements.

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- 27.** During the autumn/winter 2014-15 concerns were raised with the CSSIW by service users and their representatives regarding the quality of the service provided by Alpha. The CSSIW undertook an inspection of the company's work, and in early 2015, the CSSIW issued Alpha with six notices of non-compliance with the Domiciliary Care Agencies (Wales) Regulations 2004.
  - 28.** In late 2014, Alpha advised the Authority that it had serious financial difficulties, despite the fact that in November 2014, CSSIW had reported that Alpha's 'registered manager confirmed that there are no financial issues and that Alpha Care is a financially viable business'. In order to ensure continuity of care to its vulnerable elderly clients, the Authority took steps to try and support Alpha.
  - 29.** The Authority concluded however, that it was not sustainable to continue using Alpha due to the latter's financial position. The contract with Alpha was terminated in early April 2015. Alpha subsequently ceased trading. The Authority is now directly providing the services formerly provided by Alpha. Some 124 former Alpha members of staff were transferred to the Authority to undertake the work previously delivered by Alpha. Approximately a third of this work has now been reallocated to external providers.
  - 30.** Two of the other three suppliers appointed in March 2014 ceased providing the service within a year of the contracts commencing.

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## The governance, management and scrutiny arrangements established for the procurement of the domiciliary care service were inadequate

The 2014 tender was progressed too quickly, which left insufficient time to scrutinise and test the proposals

- 32.** As set out in [paragraph 19](#), in June 2013, the Authority invited tenders for the provision of domiciliary care services within the county. Following the receipt of tenders, several factors led the Authority to deliberate on whether to continue with the tendering exercise. These factors included:
- Tenders could not be obtained for three of the lots.
  - The successful tenderer for one lot advised the Authority that the amount of work it had won was insufficient for it to be viable to continue providing the service and that it would withdraw from any further work with effect from 15 November 2013. As the Oxford Brookes University's Institute of Public Care (IPC) report notes, the Authority managed to 'persuade the provider to continue to deliver the services right through to handover of services in April/May 2014', but 'there was a continuing concern that the service could be withdrawn at short notice at any point'.
  - In October 2013, the Authority decided that it wished to outsource the work undertaken by the in-house domiciliary care workforce by including the work in the tender process already underway. However legal advice obtained by the Authority stated that because this had not been specified in the ITT for the domiciliary care contract, and as it represented a significant change to the work specified in the ITT, the Authority could be subject to legal challenge if it attempted to outsource this work as part of the current exercise.
- 33.** As a consequence of these issues a project group (the Project Group) comprising representatives from adult social care, finance, legal and procurement met to consider the way forward. The Project Group produced a discussion paper setting out two options:
- option A: halting the current procurement process and restructure the tender to reduce the number of lots, reduce the restrictions in terms of hours and include the in-house hours to be outsourced; and
  - option B: continue with the current procurement process.
- 34.** These two options were presented to a meeting of the Adult Social Care Senior Management Team (SMT) on 5 November 2013. The minutes of the meeting record that SMT decided to recommend Option A, and that 'a decision will now be sought from the Leader of the Council and Chief Executive'.

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- 35.** On the same day, the then Council Leader and Portfolio Holder People Directorate, Chief Executive and Director of People met and agreed to support ‘the approach’ of Option A and that ‘member decision to be logged ... through appropriate process’.
- 36.** We have been told by officers that on 12 November 2013, a paper was submitted to a meeting with the then Leader and Portfolio Holder People Directorate setting out two possible options for procuring domiciliary care. These options were:
- option 1: 2 lots, in each lot 2 suppliers. Within each lot the work split 60 per cent/ 40 per cent; and
  - option 2: 4 lots, in each lot 2 suppliers. Within each lot the work split 60 per cent/ 40 per cent.
- The paper presented to the then Leader and Portfolio Holder People Directorate recommended that option 1 be approved.
- 37.** The Authority has not retained any minutes of the meeting of 12 November 2015; however, an internal email from the Head of Adult Services to other members of the Project Group dated 12 November 2015 states that, ‘the Leader and Portfolio Holder have opted for option 1 (North and South) – 2 Lots, 4 providers’.
- 38.** This decision was taken in advance of the formal decision to abandon the existing procurement process which was made by the Cabinet at its meeting held on 3 December 2013.
- 39.** On 20 November 2013, a meeting of the Provider Domiciliary Care Forum was held at which the Authority’s proposals for new contractual arrangements were presented to domiciliary care providers as set out in [paragraphs 22 to 23](#). These new proposals were presented to domiciliary care providers in advance of a decision being made by the Cabinet to abandon the previous procurement exercise.
- 40.** The minutes of a meeting of the Project Group on 4 December 2014 referring to the Provider Domiciliary Care Forum of 20 November 2013 stated that officers had ‘met the providers and others and discussed various options. The market appears to be collaborating and responding positively to this’. However the minutes of the Forum meeting record that significant concerns were raised by the providers regarding the proposals, including:
- Difficulties in recruiting staff and shortages of staff.
  - High travel costs.
  - The proposed model was not financially attractive.
  - The financial risks arising out of subcontracting.
  - Potential timescales – ‘in order for providers to submit a bid, they need to have agreements in place with potential sub-contractors tied up within the next two to three weeks. This is impossible.’

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41. The forum minutes clearly indicate that the model used within the procurement process had already been substantially developed by that date. Although the officers who attended the meeting agreed to 'consider and reflect on ... (the)... discussions and will work on the next steps and approach', there is no evidence that many of the issues raised in the Forum were addressed.
  42. On 3 December 2013, a paper was presented to and considered by Cabinet on the future of domiciliary care. This paper focuses on the future of the Authority's in-house domiciliary care staff. However, the paper also included a proposal: 'to undertake a further procurement exercise for the re-provisioning of current domiciliary care services delivered by the independent sector with new geographic lotting strategy' approved by the then Council Leader and Portfolio Holder People Directorate on 12 November'.
  43. The paper made no mention of the difficulties experienced in attracting sufficient bids under the previous tender exercise or the reasoning for the revised geographical lotting strategy.
  44. The minutes of the Cabinet meeting of 3 December 2013 record that Cabinet approved the domiciliary care proposals set out in the paper presented, including the new procurement exercise.
  45. The tendering process proceeded very quickly and the ITT was published on 8 January 2014 via the Bravo E-Tender website (Bravo). The deadline for the receipt of tenders was 17 February 2014.
  46. The rapid development of the tender did not leave adequate time to:
    - consider alternative options;
    - properly scrutinise the agreed approach;
    - ensure that the ITT included all the information required by potential tenderers to submit robust tenders; or
    - take fully into account the concerns raised by providers.
  47. It is symptomatic of the haste with which the Authority sought to put in place the new arrangements that the contract terms and conditions were not available to suppliers when the ITT was issued, and although the tender documentation stated that they would be available by 15 January 2015, they were not produced until 22 January 2015. The terms and conditions contained key information needed by potential providers to formulate the content of their tenders.
  48. We consider that the hasty development of the tender exercise contributed to the structural and procedural weakness we describe later in this report.

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**There was a lack of clarity and rigour within the decision-making process for the procurement.**

- 49.** As set out in **paragraph 36**, on 12 November 2013 a paper was presented to the then Leader and Portfolio Holder People Directorate setting out two possible options for procuring domiciliary care. An internal email from the Head of Adult Services to the Project Group records that the then Leader and Portfolio Holder People Directorate 'opted for option 1'.
- 50.** The Authority has retained no minutes of the meeting of 12 November 2013 and in consequence there is no evidence of what considerations were taken into account by the then Leader and Portfolio Holder in reaching their decision. This was in our view contrary to the Council's constitution which states that the giving and recording of reasons for decisions is a principle which applies to all decisions made by the Council (paragraph 13.2.7).
- 51.** The decision made at the meeting of 12 November 2013 was not recorded, distributed to all Members of the Council and published in the form of a decision notice as required by the Council's constitution which states that: 'A Decision Notice recording decision(s) of an individual Cabinet Member shall where ever practicable be published within two working days of the decision being taken. Decision Notices will be circulated to all Members of the County Council in accordance with the Council's current practice and will be published on the Council's Internet Site save where they contain confidential or exempt information.'
- 52.** The paper provided to the then Leader and Portfolio Holder People Directorate was not sufficiently robust. The paper did not set out an evaluation of the various possible options for delivering domiciliary care in Powys. In our view, the paper only presented a single option with two alternative lotting strategies. This was inconsistent with the Council's constitution which sets out consideration should be given to 'any alternative options'; (paragraph 13.2.6). In our view, the risks associated with the recommended procurement option and the potential impact on service delivery and the domiciliary care market were not adequately articulated.
- 53.** As set out in **paragraphs 44 to 46**, on 3 December the Cabinet approved a proposal within a paper on the future of domiciliary care: 'to undertake a further procurement exercise for the re-provisioning of current domiciliary care services delivered by the independent sector with new geographic lotting strategy, approved by the [then Leader and Portfolio Holder People Directorate] on 12th November 2013'.
- 54.** The paper did not set out the rationale for the proposal, nor did it provide any details of the proposed new contractual model or of the risks associated with it.

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- 55.** We have not seen any Authority documentation from this time which:
- sets out alternative options for commissioning and/or procuring domiciliary care services within Powys;
  - articulates the procurement model;
  - sets out how it was developed and the underlying rationale; and
  - sets out the Authority's consideration on risk and market impact.
- 56.** We understand the urgency of putting in place new contractual arrangements, particularly in view of the fact that one of the existing main providers had indicated that it intended to withdraw its services. Nevertheless, this urgency should not have compromised the integrity of the Authority's established decision-making and scrutiny arrangements.
- 57.** In view of the sensitivity and the scale of change the proposals would have on the delivery of domiciliary care in Powys, we would have expected far more information to have been provided to members to enable them to scrutinise and challenge the proposals. In the event, we have found little evidence that the proposals were subject to any robust scrutiny by officers or members.

### There was a lack of clarity regarding the project management and accountability arrangements

- 58.** The Project Group established for the previous abandoned procurement was largely retained as the Project Group for the new procurement exercise. The written terms of reference for the original Project Group were not revised to set out the remit, status and authority of the new Project Group within the Authority's overall decision-making mechanisms.
- 59.** A project plan was drawn up by the Project Group but this consisted of only a Gant chart outlining allocation of responsibilities within the Group and the expected timing of key project activities. The project plan contained only limited information on roles and responsibilities, and did not include the other information one would expect for such a large complex and sensitive project, for example:
- lines of accountability;
  - scrutiny arrangements;
  - risks and how these would be addressed;
  - project interdependencies; and
  - sign-off arrangements.
- 60.** We found a lack of review or challenge by senior officers in the project group in respect of key aspects of the tender, for example:
- the open book exercise undertaken to calculate the acceptable hourly rates; and
  - the identification of town/rural areas.

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- 61.** Key project activities which should have been undertaken were overlooked. For example, there is no evidence that the 'Qualification Envelope', one of the three tender modules was evaluated. This illustrates a lack of managerial oversight.
- 62.** The lack of effective project management arrangements was in our view, symptomatic of a project rushed through due to its perceived urgency without proper regard to good governance. Whilst there were significant pressures upon the Authority to act quickly to ensure the continuity of service provision, this did not justify shortcutting governance arrangements. If the project was time-critical, the Authority could and should have provided the project with the skills and resources necessary to progress the project quickly whilst ensuring risks were properly managed, decisions properly made and recorded, arrangements to secure value for money established and the interests of the people of Powys protected.
- 63.** In the course of consulting with the Authority on my draft findings, officers have maintained that the Authority's governance arrangements were followed and that the procurement was not rushed. In particular, officers contend that as the Authority had put in place project management arrangements for the previous procurement process which commenced in early 2013 and was subsequently abandoned, (eg a project plan, terms of reference for a Project Group, an option appraisal document etc), the Authority was able to rely on these for the procurement project to which this report relates. We do not accept this view for the following reasons:
- The previous procurement exercise failed. In the light of this, the Authority should have formally sought to evaluate the reasons for this failure and the lessons to be learned. At the very least this should have led to a fundamental reassessment of the options for delivering the domiciliary care service as part of the Authority's overall approach to commissioning. We have seen no evidence that this was the case.
  - A project plan and project management documentation cannot simply be transferred from project to project. Each project and procurement will have distinctive elements and differing accountabilities. Moreover, the membership of the Project Group for the two domiciliary care procurements differed.
  - Whilst not the subject of this report, our audit work indicates that the project documentation underpinning the previous procurement exercise which commenced in early 2013 was inadequate. For example, the option appraisal was at a very high level: the options were a) block contract, b) spot contract, c) framework, d) cost and volume and the options do not specify any detail in respect of how the work would be structured within these broad options. Furthermore, the option appraisal contained no financial information.
- 64.** In our view, if effective governance, management and scrutiny arrangements had been established for the procurement of the domiciliary care contract it may have prevented some of the flaws in the contractual arrangements set out in the following sections.

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## Weaknesses and ambiguities in the invitation to tender meant that it was not conducive to the submission of robust tenders by potential providers

### The appointment of two providers covering the same area resulted in competition for limited staff resources

- 65.** As noted above the County was divided into two framework areas with two providers appointed for each area. This structure was adopted to ensure that:

  - lots were sufficiently large to be commercially viable and attractive to potential providers; and
  - by including both town and rural areas in each framework, potential providers would not be able to avoid bidding for the more difficult to serve areas.
- 66.** Whilst the contract model ensured that domiciliary care would be available throughout Powys, insufficient consideration was given by the Authority as to how the contractors would be able to recruit sufficient staff resource to deliver their contractual responsibilities. Domiciliary care workers must be suitably skilled to provide a vital care service to vulnerable people, and yet work within a low-pay industry. This means that there is often a scarcity of suitable staff resource. The contractors appointed in the South of Powys had to compete to attract the limited staff resources available. The availability of suitable staffing was also likely to have been affected by:

  - the decision of the Authority not to transfer its own domiciliary care staff to the new providers, but to instead offer staff voluntary severance;
  - lack of willingness of previous providers to support the new providers; and
  - some carers being unwilling to start work for a new employer.
- 67.** Alpha was very proactive in seeking to recruit staff and was more successful in attracting staff than the other appointed contractor for the South of Powys. The other contractor in the South of Powys was unable to recruit the staff required for it to deliver its awarded share of the work (40 per cent). With the agreement of both suppliers, the Authority transferred some work from the other contractor to Alpha, such that Alpha would deliver 75 per cent of the workload available under the framework rather than the 60 per cent originally contracted.
- 68.** Even though Alpha was paying staff in excess of the market norm, an inspection undertaken by CSSIW in mid-October 2014 found that Alpha was still not fully staffed and that 'there is an ongoing recruitment drive.'

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- 69.** As referred to in [paragraph 42](#), concerns regarding staff availability had already been raised in the Providers' Forum. The Authority should have given greater consideration to the impact that the structure of the new contract would have on available resources within the local labour market and how it could ensure that suitable labour was available to the contractors at affordable rates. In our view, it was foreseeable that the introduction of a two-contractor model was likely to result in competition for scarce resources and this would impact upon labour rates.

### The contract structure introduced too high a degree of uncertainty for tenderers increasing the risk of provider failure

- 70.** The ITT stated that for each framework: 'The 1st ranked provider (the Lead Provider) will initially be allocated approximately 60 per cent of the hours available to be allocated in that framework. The 2nd ranked provider (the Secondary Provider) in each framework will initially be allocated approximately 40 per cent of the available hours to be allocated.'
- 71.** The ITT further stated that: 'Tenderers must bid on the basis that they may be allocated up to 60 per cent of the service if they are the 1st ranked (lead) provider or allocated up to 40 per cent of the Service if they are the 2nd ranked (secondary) provider (in the Framework for which they have bid).'
- 72.** The direct cost per hour of delivering care, (primarily the cost of carers), is not likely to vary significantly, irrespective of whether a provider wins 60 per cent or 40 per cent of the work. However, the quantum of work won has a significant impact on a provider's ability to recover its central overheads, eg management and premises costs. A supplier winning 40 per cent of the work would need to spread its overhead costs over significantly less units of activity than a provider winning 60 per cent of the work, ie the unit cost of delivering the service would be significantly higher for suppliers winning only 40 per cent of the work. This issue could have been addressed within the structure of the tender by allowing suppliers to bid different rates if awarded 40 per cent or 60 per cent of the work. However, the ITT made no provision for suppliers to bid differential rates.
- 73.** It would have been very difficult for providers to develop tenders that would have been simultaneously competitive (under the 60 per cent scenario) and sustainable (under the 40 per cent scenario).
- 74.** The approach adopted for the structure of these contracts had significant potential to result in:
- higher tender rates if a tenderer won the 60 per cent allocation; and/or
  - greater risk of provider failure if a tenderer won the 40 per cent allocation.

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- 75.** The potential impact of structuring the ITT to only allow suppliers to bid a single price for differently sized lots of work introduced too great a degree of uncertainty for tenderers who essentially had to price their bids without having a clear understanding of the quantum of work they were bidding for. We consider that the impact of this should have been foreseen by the Authority.

### The range of hourly rates specified within the invitation to tender was not soundly based

- 76.** The ITT stated that tenders should submit hourly rates which were within certain ranges. These ranges were:
- Town areas: £13.10 to £14.90
  - Rural rates: £14.30 to £16.50
- 77.** These ranges were included in the ITT to cap the rates at a level which the Authority considered appropriate and to reduce the rates from those previously charged by suppliers in Powys.
- 78.** Rates were also requested for work which previously had been delivered by the in-house workforce; these rates were required to take into account the provisions of TUPE and were capped by the ITT at £35 per hour. No differentiation was made between rural and town areas.
- 79.** We have been advised that the rates cited in the ITT were based on an 'open book' exercise undertaken by the Authority in 2011 in conjunction with some of the Authority's existing providers. The 'open-book' exercise involved:
- Asking suppliers to provide a detailed analysis of the hourly cost in delivering services for the Authority and the rates charged for this work.
  - The costs and rates charged were adjusted by the Authority to reflect inflation, an assessment of excess profits earned as a result of the then basis of contracting used by the Authority (spot-contracting) and to reduce actual profit margins to a maximum of three per cent. This was used to produce a 'target rate'
  - The target rate was used to inform the minimum/maximum price ranges used within the ITT.
- 80.** The Authority has provided us with the 'open book' working papers from which the rates within the ITT were derived. We consider the methodology used and the way the rates within the ITT were calculated was fundamentally flawed for the following reasons:
- The suppliers participating in the open-book exercise based their costs on delivering between 5,872 and 88,000 hours of care per annum for the Authority. However, the ITT required successful suppliers to deliver a minimum of 170,000 hours of care. There is no evidence that any consideration was given to the impact of scale of operation on cost.

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- The rates within the ITT assumed suppliers should be able to make a three per cent profit on the care hours delivered. However, suppliers were required to subcontract up to 40 per cent of the work. There is no evidence that the calculation of the range of rates within the ITT took into account the need for suppliers to obtain a margin on the work undertaken by subcontractors.
  - Whilst the model included provision for inflation, this only applied to the period up until 2013. The contract did not commence until 2014.
  - There is no clear link between the calculated target rate and the range of rates included within the ITT.
  - There are errors in formulae within the spreadsheet used to calculate the 2011 average cost. For example, the wages of care staff was calculated to be £6.44 per hour but based upon the information provided should have been calculated to be £7.09 per hour. This differential based on the maximum hours within the ITT equates to some £560,000 per annum. Similarly, the cost of travel was understated in the calculations by £0.16 per hour, equating to some £130,000 per annum.
  - The figures provided by suppliers in respect of miles travelled per hour were adjusted downwards by 25 per cent on the assumption that terminating spot-contracting would significantly reduce travel requirements. No evidence has been provided to support this assumption which resulted in the calculated target rate being reduced.
- 81.** The Authority has told us that it accepts that ‘there is no evidence that the open book exercise was reviewed and/or challenged by senior officers’.
- 82.** A further benchmarking exercise undertaken by the Authority based on information from 16 Welsh, English and Scottish authorities identified rates ranging from £10.99 per hour to £25 per hour, but it is unclear how comparable these figures were.
- 83.** The way in which the contract was structured, the weaknesses in the open book exercise and the lack of clarity regarding some of the information contained in the ITT, calls into question whether the hourly rates cited in the ITT were realistic and sustainable in the context of Powys.
- 84.** This is illustrated by:
- the financial difficulties experienced by Alpha;
  - one of the appointed suppliers stated that it required a rate of at least £19.85 per hour for its contract to be sustainable; and
  - one of the appointed suppliers stated that they had predicated their bid on calls of at least one hour’s duration, and that its contract, at current rates, was not sustainable.

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- 85.** We are unclear what purpose providing ranges of rates within which suppliers must bid served in practice. One of the consequences of including the ranges was that most tenderers bid at the lower end of the ranges in order to optimise their chance of being awarded work. In consequence, there was very little price differential between the bids of the suppliers.
- 86.** The rate ranges also failed to take into account that suppliers would be required to sub-contract up to 40 per cent of the awarded work. This meant that the successful contractors needed to agree sub-contractor rates which were lower than the contract rates within their tender so they could cover their overhead costs. The level of the bid prices meant that it was very difficult for the contractors to obtain sub-contracted services at affordable prices. This is considered in more detail below in [paragraphs 114 to 123](#).

### There was a lack of clarity in the invitation to tender regarding the workload available to providers and its distribution

- 87.** In 2012-13, the Authority's records show that it provided some 668,000 hours of domiciliary care, which increased to 751,000 in 2013-14, sourced from both its in-house workforce and from external providers.
- 88.** The ITT identified four possible levels of work. These are summarised in [Exhibit 1](#).

**Exhibit 1: workloads specified in the ITT**

	Total for both frameworks (Hrs)
Current hours available, external suppliers	631,000
Current hours available, in-house and external suppliers	757,000
Current hours available augmented by 15 per cent, external suppliers	726,650
Current hours available augmented by 15 per cent, in-house and external suppliers	870,550

Source: ITT – instructions to tenderers

- 89.** No explanation was provided in the ITT of the 15 per cent augmentation and the circumstances in which the additional work would become available.
- 90.** With regard to the position of the work previously undertaken by the in-house workforce, the ITT stated that: 'The Council reserves the right to make available hours currently delivered by the Council's in house teams. ....It is at the Council's sole discretion whether or not to purchase Internal Hours via the 'Frameworks'.'

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91. The ITT identified the expected geographical distribution of the maximum quantum of work by Framework and by whether that work would be rural or urban (see [Appendix 1](#)). However, 23 per cent of the work for South Powys was not categorised as rural or urban but as 'unknown'. The 'unknown' category relates to the work formerly delivered by the in-house workforce.
92. As a result of the above factors, and the fact that tenderers did not know whether if successful they would be awarded 40 per cent or 60 per cent of the work, potential providers faced significant uncertainty when compiling tenders with regards to:
- the total level of work available; and
  - the allocation between rural/town areas.
93. It is widely recognised that companies in the domiciliary care industry operate on very tight financial margins. To allow potential providers to compile robust tenders, it is important for them to have reliable information on the extent of work available.
94. In the event both the total quantum of work available to tenderers was overstated (see [paragraphs 98 to 104](#)) and the expected split between rural and urban areas was also found to be inaccurate once the contracts commenced (see [paragraphs 105 to 110](#)).

### The estimated workload specified in the invitation to tender was overstated

95. The actual number hours of domiciliary care delivered by external providers for 2014-15, the first year of the contracts, was 555,000, being between 64 per cent and 88 per cent of the estimated amount quoted in the ITT. In a meeting held with Council officers in September 2014, Alpha stated that its workload was 30 per cent lower than it had expected from the ITT.
96. The reduction compared to previous years arose due to:
- Some domiciliary care continuing to be delivered in-house to cover gaps in the coverage of providers appointed in 2014.
  - Reduction in demand due to the expansion of the re-ablement service. As noted above the Authority had estimated that its expanded re-ablement service would reduce domiciliary care costs by some £1.9 million per annum. It does not appear that this factor was taken into consideration in developing the ITT for the domiciliary care service.
  - A number of recipients of the service transferred to the direct payment scheme, which allows them to purchase care directly from providers of their choice. The number of people eligible for domiciliary care opting for direct payments increased significantly during 2014-15. In 2013-14, 287 clients opted for direct payments at a total cost to the Authority of £3,359,750; by 2014-15 these figures had increased to 450 clients at a cost of £4,896,762.

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97. We were also advised by the Authority that at the date of compiling the ITT, the data held on activity levels was unreliable. We have been advised that systems have been established to ensure that better activity information is now available.
  98. During the providers meeting in November 2013, concerns were raised regarding the prospective work load by one of the existing providers. The provider stated that the proposed activity levels seemed to show 'at least in relation to our own services, levels of service up to 20 per cent over what we currently deliver' and that the 'information is ..... not providing an accurate picture of service delivery across Powys.'
  99. This issue was again raised with the Authority by another existing supplier during the tendering process via the on line query facility in Bravo. The Authority's response to this query was: 'This information is an example of packages which may be commissioned via the Framework. Obviously it is the nature of the service that this list alters daily. The actual, final customer data will be provided by the Council to the appointed bidders only prior to final allocation of hours. However it is planned that the hours allocated to the appointed bidders will be around the same volume in terms of hours and similar in terms of location.'
  100. This response turned out to be incorrect because the appointed bidders were not allocated 'around the same volume in terms of hours and similar in terms of location'.
  101. As noted above, the domiciliary care industry operates on very tight financial margins. The reduction in actual hours compared to the estimates provided in the ITT is likely to have had a significant impact on the viability of the contracts awarded. The Authority should have ensured that it had validated that the information provided to tenderers within the ITT was reliable and robust. Whilst the Authority wished, for legitimate reasons, to introduce new contractual arrangements as quickly as possible, this should not have been at the expense of rigour. If the project was time-critical, the Authority should have provided additional resource to ensure that the arrangements were robust.

### The geographic distribution of the workload specified in the invitation to tender was incorrect

102. **Appendix 1** summaries the geographical distribution of the work available as outlined in the ITT (with the exception of work transferred from the in-house staff as noted above), split between town and rural areas.
103. Potential providers were requested to submit separate rates for town and rural areas. The cost of providing domiciliary care in rural areas is higher than that in town areas, mainly due to increased transport costs. In some parts of the county with low population densities, transport costs can be high.
104. The ITT stated that the workload in Framework A would be split 62:38 between town and rural areas (excluding the work undertaken by former in-house staff).

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- 105.** The Authority has not been able to demonstrate how the original split was calculated. In fact, the work allocated to Alpha was split 90:10 between town and rural areas.
- 106.** The difference between the expected distribution of town/rural workload set out in the ITT and what happened in practice impacted on the income tenderers could have expected from the contract.
- 107.** In March 2015, the Authority re-evaluated the town/rural split. The maximum distance from a town centre used to classify packages of care as town was reduced from 10 miles to seven miles. A back payment of £35,000 was made to Alpha to reflect this change.

### The invitation to tender did not provide information on the length of visits

- 108.** One of the factors impacting on the hourly cost of domiciliary care is the length of the visits made to clients. The shorter the visits, the greater the hourly cost, due to relatively higher transport costs.
- 109.** The ITT however contained no information on visit lengths. Potential providers were therefore left to make their own assumptions regarding visit lengths. For example one provider had stated that it had based its tender on visit lengths of one hour and that 'calls that are less are not sustainable on the hourly rate'.

### The scoring structure of the invitation to tender led to high levels of subcontracting, which in the case of Alpha significantly impacted on the company's ability to recover its overheads

- 110.** In compiling the tender, the Authority sought to:
- source as much work as possible from within the county boundary (to ensure that as much as possible of the money spent on providing the service was retained within the Powys economy; referred to by the Authority as protecting the 'Powys Pound'); and
  - ensure the continuation of an active local supplier base.
- 111.** One method of achieving these aims was to encourage successful tenderers to subcontract a significant proportion of the work to other suppliers.
- 112.** While the ITT did not state that potential providers were required to subcontract a particular level of work, they were requested to state how much work they would subcontract, in the range 0 per cent to 40 per cent of the allocated workload. The higher the level of subcontracting, the higher the score achieved in the tender assessment process as shown in [Exhibit 2](#).

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Exhibit 2: the scoring of proposed subcontracted work

Proportion of work subcontracted	Score (points)
0%	2.5
10%	5
20%	15
30%	20
40%	30

113. A further 10 points was based on assessment of providers' proposals to manage subcontractors.
114. Forty points, 20 per cent of the maximum score (200 points), was linked to the use of subcontractors. The scoring mechanism therefore encouraged potential providers to maximise the use of subcontractors: it is unlikely that a potential provider's tender would be successful unless a high level of subcontractor input was specified. Three of the four successful providers proposed to subcontract 40 per cent of the work, and the remaining provider proposed to subcontract 30 per cent.
115. However, Alpha found that the hourly rates demanded by subcontractors were only some 2.5 per cent less than the rates being paid by the Authority. In light of the cost structure of the industry and the competition for care staff in Powys, this was not unexpected. This meant that 40 per cent of its work was not making any meaningful contribution towards the company's overheads.
116. In our view, there was an over emphasis on subcontracting within the scoring of tenders and there is little evidence to suggest that the Authority considered what impact this would potentially have on the market and the financial viability of tenderers. In consequence, this resulted in:
- Significant uncertainty for tenderers within the bidding process. Tenderers were asked to bid for work without knowing the cost of providing up to 40 per cent of the work or whether they would be able to find suitable subcontractors to undertake the work.
  - Suppliers needing to attract scarce subcontractor resources having to pay subcontractors at a rate which provided little or no contribution to the supplier's overhead costs.
117. This was within the context that many of the potential subcontractors that had previously supplied domiciliary services for Powys County Council under spot-contracts, felt disenfranchised by their exclusion from the new contract, and had previously been paid far more than the subcontracted rates being offered by the contractor.

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- 118.** At a meeting of the Provider Domiciliary Care Forum on 20 November 2013 concerns were raised with the Authority by potential providers regarding the financial viability of using subcontractors, particularly given the very short timescale available to reach an agreement with potential subcontractors.
- 119.** It was therefore always likely that the contractors would find it difficult to obtain subcontractors who would work for much, if anything, less than the rates being paid to the contractors.

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## Weaknesses in the processes adopted for the evaluation of tenders submitted by potential providers has resulted in the Authority being unable to demonstrate that contract award decisions were soundly based

There is no evidence that a range of information requested from tenderers by the invitation to tender was evaluated by the Authority

- 120.** The ITT consisted of three sections or 'envelopes':
  - The qualification envelope
  - The technical envelope
  - The commercial envelope
- 121.** The 'qualification envelope' requested a range of information on a potential provider, including:
  - Financial standing
  - Capability and capacity
  - Quality management
  - Equal opportunities
  - Sustainability
- 122.** There is no evidence that this information was checked for completeness or was evaluated.
- 123.** Evaluating potential service providers' financial reports is an essential part of the process of due diligence and obtaining assurance regarding the financial resilience of tenderers to provide the service over the contract period. From a managerial perspective, financial reports can provide insight into the scale of work that can be managed by the providers.
- 124.** The ITT requested that tenderers provide:
  - audited accounts for the most recent three financial years;
  - any quarter or half yearly accounts, results or management accounts since the end of the most recently completed financial year; and
  - their Dun and Bradstreet registration number.
- 125.** There was no requirement for Alpha's accounts to be audited as, due to the size of the company, it fell below the audit threshold. Alpha therefore provided unaudited copies of their 2010-11 and 2011-12 annual accounts. Neither set of accounts was signed by the accountant who compiled the accounts. Little assurance therefore could have been placed on these accounts as sources of information on the company's trading activities and financial position.

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- 126.** In view of the long time lag between the end of the period covered by the latest set of accounts provided and the date on which the tender was submitted (July 2012 and January 2014 respectively), it would not have been unreasonable to expect management accounts and/or draft annual accounts for 2012-13 and management accounts for July to December 2013 to have been submitted in order to comply with the ITT requirements.
- 127.** The company's turnover for 2011-12 (the latest set of accounts provided as part of the tender process) was some £834,000. Alpha was being evaluated on their capacity to deliver a contract with a potential value in the range £1.9 million to £2.9 million. A review of the accounts provided should therefore have raised questions regarding:
- the company's capacity to manage the cash flow implications of such a significant expansion in activity;
  - its management capacity to deliver such a significant expansion in activity; and
  - the reasons for the lack of financial information dated later than July 2012.
- 128.** The Authority has provided us with access to all the tender evaluation records it holds. However, the documents held by the Authority do not record that the information provided by all tenderers including Alpha was considered or that the Authority satisfied itself on the points set out in [Paragraph 127](#). Whilst it is possible that Alpha could have provided satisfactory answers to these questions, in not considering these matters the Authority exposed itself to unnecessary risk of contractor failure and potential disruption to a vital service.
- 129.** In September 2014, the Authority obtained a credit limit check of Alpha from a national credit reference agency. The credit report states, 'The company appears to be of sufficient financial stability to undertake contracts to a value of £600,000'. This report was obtained just 6 months after the Authority awarded Alpha a 4 year contract with a total estimated value of £7 million.
- 130.** In October 2015, the Authority's Treasury Manager undertook an assessment of Alpha's financial capacity based on Alpha's financial position as at 2013 (prior to the contract award). This assessment concluded that the maximum contract award which the Authority should have considered making to Alpha was £485,000.

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## The inclusion of hourly rates in the tender evaluation for Authority staff who might be transferred to providers distorted the tender evaluations

- 131.** The authority's in-house work force had historically provided a proportion of the domiciliary care services. In 2013-14 this totalled some 144,000 care hours (19 per cent of the total).
- 132.** The work undertaken by the in-house workforce had not been included in the 2013 tender exercise. However in October 2013 the Authority decided that it would transfer this work to external contractors. A costing exercise undertaken by the Authority indicated that if the staff employed by the in-house workforce were to be transferred to external providers, the protection provided to the staff's terms and conditions by the provisions of TUPE would result in very high costs falling on the external providers, which would ultimately be reflected in the prices paid by the Authority.
- 133.** Therefore, on 3 December 2014, the Authority's Cabinet agreed to offer voluntary severance to the in-house staff.
- 134.** Despite this decision, the ITT identified between 126,000 and 145,000 hours of domiciliary care work which the Authority could request, at its discretion, successful tenderers to undertake using care staff transferred from the Authority. The ITT requested potential providers to include hourly rates for undertaking work using former Authority employees transferred to the successful providers. (This work was described as 'internal hours' in the ITT).
- 135.** However the ITT did not contain the payroll information required to calculate the rates for the 'internal hours'. This was raised with the authority by a number of potential providers during the tender process. The Authority's response was that:
  - the Authority is not committed to commissioning any internally delivered hours via the frameworks but wishes to reserve the right to do so at a point in the future;
  - should it decide to transfer staff it will provide relevant TUPE information at the relevant time; and
  - it would be willing to negotiate with bidders regarding the exact rate to be paid and may be prepared to pay in excess of the 'maximum' rate of £35 per hour set out in the tender.
- 136.** Notwithstanding these responses, the ITT still required tenderers to submit a rate for the work. The rates submitted by tenderers ranged between £14.30 per hour and £35 per hour (the latter rate was included by six of the 10 evaluated tenders). The wide range of rates indicates tenderers did not have sufficient information on which to base robust submissions.
- 137.** In view of the Authority's intention to minimise the number of in-house staff transferred to providers and its stated position that it would negotiate with the successful contractors over the rate it would pay for transferred staff, we consider that it was inappropriate to include the rates submitted for internal hours within the scoring mechanism and to include this factor in the ranking of contractors.

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**138.** It should be noted that no staff were transferred from the Authority to any of the providers, due mainly to:

- internal transfers to the Authority's re-ablement service; and
- staff accepting the authority's offer of voluntary severance.

**139.** A review of the evaluation of the 'commercial' (or priced element) of the tenders showed that had the 'internal hours' element been removed:

- it would have affected the ranking of the tenderers for Framework A (South Powys) but is unlikely to have changed which two tenderers were appointed to Framework A; and
- it would have affected which tenderers were appointed to Framework B (North Powys).

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## The Authority tried to support Alpha to deliver the contract, but its efforts proved unsuccessful

### The Authority sought to support Alpha's cash flow by paying agreed elements of disputed invoices

- 140.** The contract with Alpha set out the target that undisputed invoices would be paid within 30 days of receiving the invoices. However, a large number of invoices submitted by Alpha were disputed by the Authority for various reasons. This had a significant impact on Alpha's cash flow.
- 141.** The Authority sought to reduce the impact by making payments to Alpha based upon those elements of the invoices which were undisputed, whilst continuing to seek resolution on the disputed elements.

### The Authority provided other practical assistance to support Alpha

- 142.** In order to provide practical support to Alpha an officer from the Authority was seconded to Alpha for short periods in order to assist the development of rotas and schedules.
- 143.** Towards the end of 2014, Alpha's performance started to deteriorate and in January 2015 a Performance Notice was issued. This identified performance issues that needed to be resolved. Frequent meetings were held between the Authority and Alpha in an attempt to determine whether Alpha's performance and financial difficulties could be resolved.

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## The Authority continued to support Alpha until it became clear that Alpha was not sustainable

- 144.** As Alpha's financial position worsened, various further steps were taken to financially support the company in order to safeguard the continuity of the service. These steps included:
- revising the definitions of the town/rural areas for both contract areas, so that all suppliers, (including Alpha) would benefit from the higher rates that it had submitted for the rural areas, as set out in [paragraphs 105 to 110](#); and
  - from 4 March 2015, paying Alpha for the work taken over from the secondary contractor, at the secondary contractor's tendered rates.
- 145.** Consideration was also given to providing a loan of £285,000 to Alpha. In order to determine Alpha's underlying financial position, the Authority undertook a due diligence review of the company's finances. Following the review the Authority concluded that due to Alpha's precarious financial position a loan could not be justified.
- 146.** During the first few months of 2015 the Authority started developing contingency plans in the event of Alpha being unable to continue trading. By early April 2015, the Authority concluded that to continue with Alpha was no longer viable and its contract was terminated. To ensure continuity of service, the Authority took back in-house the work covered by the Alpha contract and transferred Alpha's staff to the Authority to deliver this work.

# Appendix 1

The geographic distribution of the estimated workload specified in the invitation to tender

Per ITT	Town		Rural		Unknown		
	Hrs	%	Hrs	%	Hrs	%	
<b>Framework A</b>							
Brecknockshire town	119268	119268	27				
Brecknockshire rural	67732			67732	15		
Brecknockshire internal	56650					56650	13
Radnorshire town	92251	92251	21				
Radnorshire rural	61749			61749	14		
Radnorshire internal	46350					46350	10
<b>Total</b>	<b>444000</b>	<b>211519</b>	<b>48</b>	<b>129481</b>	<b>29</b>	<b>103000</b>	<b>23</b>
<b>Framework B</b>							
Montgomery town	229296	229296	54				
Montgomery rural	154804			154804	36		
Montgomery internal	41400					41400	10
<b>Total</b>	<b>425500</b>	<b>229296</b>	<b>54</b>	<b>154804</b>	<b>36</b>	<b>41400</b>	<b>10</b>
<b>Grand total</b>	<b>869500</b>	<b>440815</b>	<b>51</b>	<b>284285</b>	<b>33</b>	<b>144400</b>	<b>17</b>

Source: ITT – commercial envelope



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